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HOUSE BILL 881

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CREDIT REPORTING; REQUIRING A CONSUMER REPORTING AGENCY TO REMOVE INFORMATION CONTESTED BECAUSE OF IDENTITY THEFT OR FALSE REPORTING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 56-3A-1 NMSA 1978 (being Laws 2007, Chapter 106, Section 1) is amended to read:

"56-3A-1. SHORT TITLE.--~~[This act]~~ Chapter 56, Article 3A NMSA 1978 may be cited as the "Credit Report Security Act"."

Section 2. Section 56-3A-2 NMSA 1978 (being Laws 2007, Chapter 106, Section 2) is amended to read:

"56-3A-2. DEFINITIONS.--As used in the Credit Report Security Act:

A. "consumer" means an individual who is a resident

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1 of New Mexico;

2 B. "consumer reporting agency" means any person  
3 that, for monetary fees, dues or on a cooperative nonprofit  
4 basis, regularly engages in the practice of assembling or  
5 evaluating consumer credit information or other information on  
6 consumers for the purpose of furnishing credit reports to third  
7 parties;

8 C. "credit report" means a written, oral or other  
9 communication of information by a consumer reporting agency  
10 bearing on a consumer's credit worthiness, credit standing,  
11 credit capacity, character, general reputation, personal  
12 characteristics or mode of living that is used or expected to  
13 be used or collected for the purpose of serving as a factor in  
14 establishing the consumer's eligibility for credit, insurance,  
15 investment, benefit, employment or other purpose as authorized  
16 by the federal Fair Credit Reporting Act, 15 U.S.C. Section  
17 1681a;

18 D. "declaration of removal" means a statement  
19 delivered by mail, facsimile or electronically to a consumer  
20 reporting agency that operates within New Mexico and that  
21 states:

22 (1) that the consumer is entitled to removal  
23 of information in the consumer reporting agency's files on  
24 grounds that the consumer is the victim of identity theft or  
25 false reporting; and

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1                   (2) the address at which the consumer is  
2 available for service of process by the consumer reporting  
3 agency and an identifying number such as a social security  
4 number by which the consumer can be identified in the credit  
5 bureau's files;

6                   [~~D.~~] E. "person" means an individual, corporation,  
7 firm, association, organization, trust, estate, cooperative,  
8 business, partnership, limited liability company, joint  
9 venture, governmental agency or subdivision or any legal or  
10 commercial entity; [~~and~~

11                   ~~E.~~] F. "security freeze" means a notice placed in a  
12 consumer's credit report, at the request of the consumer and  
13 subject to certain exceptions, that prohibits a consumer  
14 reporting agency from releasing the consumer's credit report or  
15 score relating to the extension of credit or the opening of new  
16 accounts without the express authorization of the consumer; and

17                   G. "operates within New Mexico" means accepting or  
18 maintaining a credit report on a person who resides within New  
19 Mexico."

20                   Section 3. A new section of the Credit Report Security  
21 Act is enacted to read:

22                   "[NEW MATERIAL] DECLARATION OF REMOVAL--PROCEDURES.--

23                   A. A consumer may file a declaration of removal  
24 with a credit bureau operating within New Mexico declaring that  
25 the consumer:

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1 (1) is the victim of identity theft or false  
2 reporting;

3 (2) is eligible for removal of data reported  
4 to or by the credit bureau on the basis of identity theft or  
5 false reporting;

6 (3) is available for service of process at a  
7 designated address; and

8 (4) discloses an identifying number, such as a  
9 social security number, by which the consumer may be identified  
10 in the credit bureau files.

11 B. A consumer reporting agency shall make available  
12 on a web site and on all credit reports of the consumer  
13 reporting agency the means for contacting the consumer  
14 reporting agency through telephone, facsimile and electronic  
15 media.

16 C. Within five days of receiving a declaration of  
17 removal and receipt of a fee as authorized in Subsection I of  
18 Section 56-3A-3 NMSA 1978, a consumer reporting agency shall  
19 remove from its files the data that are the subject of the  
20 declaration of removal. A facsimile or electronic mail  
21 confirmation is prima facie evidence that the consumer  
22 reporting agency received the declaration of removal.

23 D. If a consumer reporting agency fails to remove  
24 data that are the subject of a declaration of removal or  
25 restores data that are the subject of a declaration of removal

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1 in violation of the provisions of the Credit Report Security  
2 Act, the affected consumer may bring a civil action against the  
3 consumer reporting agency for:

4 (1) injunctive relief to remove the  
5 information or to prevent further violation of the declaration  
6 of removal;

7 (2) actual damages sustained by the affected  
8 consumer as a result of the violation;

9 (3) a civil penalty in an amount not to exceed  
10 two thousand dollars (\$2,000) for each violation of the  
11 declaration of removal; and

12 (4) costs of the action and reasonable  
13 attorney fees.

14 E. Upon request of a consumer, or upon a court's  
15 order, after adjudication of the alleged debt in the judicial  
16 district of the consumer, a consumer reporting agency may  
17 restore the information that was the subject of a declaration  
18 of removal."

19 Section 4. Section 56-3A-3 NMSA 1978 (being Laws 2007,  
20 Chapter 106, Section 3) is amended to read:

21 "56-3A-3. SECURITY FREEZE.--

22 A. A consumer may elect to place a security freeze  
23 on the consumer's credit report by making a request to a  
24 consumer reporting agency by means of certified or regular mail  
25 sent to an address designated by the consumer reporting agency,

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1 or by means of a telephone or a secure electronic method if  
2 such means are provided by the agency. A consumer shall  
3 provide any personal identification required by the consumer  
4 reporting agency and pay a fee, if applicable.

5 B. A consumer reporting agency shall place a  
6 security freeze on a consumer's credit report no later than  
7 three business days after receiving a request from the  
8 consumer.

9 C. Within five business days of placing a security  
10 freeze on a consumer's credit report, a consumer reporting  
11 agency shall:

12 (1) send a written confirmation of the  
13 security freeze to the consumer; and

14 (2) provide the consumer with a unique  
15 personal identification number, password or similar device to  
16 be used by the consumer when providing authorization for the  
17 release of the consumer's credit report to a specific person or  
18 for a specific period of time or for permanent removal of the  
19 freeze.

20 D. While a security freeze is in effect, a consumer  
21 may authorize a consumer reporting agency to release the  
22 consumer's credit report to a specific person or to release the  
23 credit report for a specific period of time by contacting the  
24 consumer reporting agency by regular or certified mail or by  
25 telephone, and as of September 1, 2008, by contacting the

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1 consumer reporting agency by mail, by telephone or by a secure  
2 electronic method, and providing:

3 (1) proper identification;

4 (2) the unique personal identification number,  
5 password or similar device;

6 (3) information regarding the party that is to  
7 have access to the credit report or the time period during  
8 which the credit report can be released; and

9 (4) payment of a fee, if applicable.

10 E. A consumer reporting agency that receives a  
11 request pursuant to Subsection D of this section shall release  
12 a consumer's credit report as requested by the consumer within  
13 three business days after the business day on which the  
14 consumer's request by regular or certified mail or by telephone  
15 is received by the consumer reporting agency. As of September  
16 1, 2008, a consumer reporting agency that receives a request  
17 pursuant to Subsection D of this section shall release a  
18 consumer's credit report as requested by the consumer within  
19 fifteen minutes after the consumer's request is received by the  
20 consumer reporting agency through the use of a telephone or a  
21 secure electronic method provided by the agency, which may  
22 include the use of the internet, facsimile or other electronic  
23 means; provided that the consumer reporting agency is not  
24 required to release the credit report within fifteen minutes  
25 unless the consumer's request is received by the consumer

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1 reporting agency between the hours of 6:00 a.m. and 9:30 p.m.  
2 mountain standard or mountain daylight time, as applicable,  
3 Sunday through Saturday.

4 F. A consumer reporting agency need not release a  
5 credit report within the time periods set forth in Subsection E  
6 of this section if:

7 (1) the consumer fails to meet the  
8 requirements of Subsection D of this section; or

9 (2) the consumer reporting agency's ability to  
10 remove the security freeze within fifteen minutes is prevented  
11 by:

12 (a) an act of God, including fire,  
13 earthquake, hurricane, storm or similar natural disaster or  
14 phenomenon;

15 (b) unauthorized or illegal acts by a  
16 third party, including terrorism, sabotage, riots, vandalism,  
17 labor strikes or disputes disrupting operations or similar  
18 occurrences;

19 (c) operational interruption, including  
20 electrical failure, unanticipated delay in equipment or  
21 replacement part delivery, computer hardware or software  
22 failure inhibiting response time or similar disruption;

23 (d) governmental action, including  
24 emergency orders or regulations, judicial or law enforcement  
25 actions or similar directives;

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1 (e) regularly scheduled maintenance of,  
2 or updates to, the consumer reporting agency's systems during  
3 other than normal business hours; or

4 (f) commercially reasonable maintenance  
5 of, or repair to, the consumer reporting agency's systems that  
6 is unexpected or unscheduled.

7 G. If a consumer reporting agency erroneously  
8 releases information on a credit report while a security freeze  
9 is in effect and without a consumer's authorization, it shall  
10 notify the consumer of the release of information within five  
11 business days of the agency's discovery of the erroneous  
12 release of information and inform the consumer of the specific  
13 information released and the third party to whom it has been  
14 released.

15 H. A security freeze shall remain in place until a  
16 consumer requests its removal. A consumer reporting agency  
17 shall remove the security freeze within three business days  
18 after receiving a request from a consumer who provides the  
19 unique personal identification number, password or similar  
20 device and proper identification.

21 I. A consumer reporting agency may charge a  
22 consumer a fee of no more than ten dollars (\$10.00) for the  
23 placement of a security freeze or declaration of removal. A  
24 consumer reporting agency may charge a fee of no more than five  
25 dollars (\$5.00) for the release of a credit report, upon which

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1 a security freeze or declaration of removal has been placed, to  
2 a specific person or for a specific period of time. A consumer  
3 reporting agency may charge a fee of no more than five dollars  
4 (\$5.00) for the removal of a security freeze or to change a  
5 declaration of removal. A fee shall not be charged to a  
6 consumer who is sixty-five years of age or older or to a victim  
7 of identity theft who provides a valid police or investigative  
8 report filed with a law enforcement agency alleging the crime  
9 of identity theft. A consumer reporting agency shall accept  
10 payment by debit or credit card online and by phone and shall  
11 accept automatic clearing house online payment.

12 J. If a consumer's credit report was frozen due to  
13 a material misrepresentation of fact by the consumer and a  
14 consumer reporting agency intends to remove the freeze, the  
15 consumer reporting agency shall notify the consumer in writing  
16 five business days prior to removing the security freeze on the  
17 consumer's credit report.

18 K. A consumer reporting agency may advise a third  
19 party that a security freeze is in effect with respect to a  
20 consumer's credit report. A consumer reporting agency shall  
21 not suggest or otherwise state or imply to a third party that  
22 the security freeze reflects a negative credit score, history,  
23 report or rating.

24 L. The provisions of this section do not prevent a  
25 consumer reporting agency from releasing a consumer's credit

1 report:

2 (1) to a person or the person's subsidiary,  
3 affiliate, agent or assignee with which the consumer has or,  
4 prior to assignment, had an account, contract or  
5 debtor-creditor relationship for the purpose of reviewing the  
6 account or collecting the financial obligation owing for the  
7 account, contract or debt, or to a prospective assignee of a  
8 financial obligation owing by the consumer in conjunction with  
9 the proposed purchase of the financial obligation. As used in  
10 this paragraph, "reviewing the account" includes activities  
11 related to account maintenance, monitoring, credit line  
12 increases and account upgrades and enhancements;

13 (2) to a subsidiary, affiliate, agent,  
14 assignee or prospective assignee of a person to whom access has  
15 been granted by the consumer pursuant to Subsection D of this  
16 section for the purpose of facilitating the extension of credit  
17 or other permissible use;

18 (3) to a person or entity administering a  
19 credit file monitoring subscription service to which the  
20 consumer has subscribed;

21 (4) to a person or entity for the purpose of  
22 providing a consumer with a copy of the consumer's credit  
23 report upon the consumer's request;

24 (5) to a person acting pursuant to a court  
25 order, warrant or subpoena;

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1 (6) to the child support enforcement division  
2 of the human services department for the purpose of carrying  
3 out its statutory duties of establishing and collecting child  
4 support obligations;

5 (7) to a governmental agency acting to  
6 investigate fraud, to investigate or collect delinquent taxes  
7 or unpaid court orders or to fulfill any of its other statutory  
8 duties;

9 (8) to a person for the purposes of  
10 prescreening as defined by the federal Fair Credit Reporting  
11 Act;

12 (9) from a consumer reporting agency's  
13 database or file that consists only of and is used solely for  
14 one or more of the following:

- 15 (a) criminal record information;
- 16 (b) tenant screening;
- 17 (c) employment screening; or
- 18 (d) fraud prevention or detection; or

19 (10) to a person or entity for use in setting  
20 or adjusting an insurance rate, adjusting an insurance claim or  
21 underwriting for insurance purposes.

22 M. The following entities are not required to place  
23 a security freeze on a credit report:

24 (1) a consumer reporting agency that acts only  
25 as a reseller of credit information by assembling and merging

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1 information contained in the database of another consumer  
2 reporting agency or multiple consumer credit reporting agencies  
3 and does not maintain a permanent database of credit  
4 information from which new consumer credit reports are  
5 produced. However, a consumer reporting agency acting as a  
6 reseller shall honor any security freeze placed on a consumer  
7 credit report by another consumer reporting agency;

8 (2) a check services or fraud prevention  
9 services company that issues reports on incidents of fraud or  
10 authorizations for the purpose of approving or processing  
11 negotiable instruments, electronic funds transfers or similar  
12 methods of payment; or

13 (3) a deposit account information service  
14 company that issues reports regarding account closures due to  
15 fraud, substantial overdrafts, automatic teller machine abuse  
16 or similar negative information regarding a consumer to  
17 inquiring banks or other financial institutions for use only in  
18 reviewing a consumer request for a deposit account at the  
19 inquiring bank or financial institution."